

UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF NEW HAMPSHIRE

Walter Norton

v.

Civil No. 06-cv-282-JD

United States

O R D E R

The court of appeals has remanded this case for consideration of Walter Norton's pro se motion to vacate his sentence pursuant to 28 U.S.C. § 2255. Norton contends that his counsel was constitutionally ineffective in failing to appeal an issue related to his sentence. Norton filed a memorandum in support of his motion the day after judgment was entered dismissing the motion. With the memorandum, Norton filed a letter from counsel that indicated Norton had requested but counsel declined to file an appeal.

Defense "counsel has a constitutionally imposed duty to consult with the defendant about an appeal when there is reason to think either (1) that a rational defendant would want to appeal (for example, because there are nonfrivolous grounds for appeal), or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing." Roe v. Flores-Ortega, 528 U.S. 470, 480 (2000). Counsel's representation is constitutionally deficient if he or she fails

to follow a defendant's express instruction with respect to an appeal. Id. at 478. In deciding whether counsel's failure to file an appeal constitutes ineffective assistance of counsel, the court considers the totality of the circumstances, including what counsel knew or should have known and, in the case of a guilty plea, "whether the defendant received the sentence bargained for as part of the plea and whether the plea expressly reserved or waived some or all appeal rights." Id. at 480.

To address the issue of ineffective assistance of counsel in the circumstances of this case, a hearing will be held with Norton, his former counsel, James Gleason, Assistant United States Attorney Donald Feith, and United States Probation Officer Cathy Battistelli. The date of the hearing will be set by the deputy clerk.

SO ORDERED.

  
Joseph A. DiClerico, Jr.  
United States District Judge

May 23, 2007

cc: Aixa Maldonado-Quinones, Esquire  
Walter Norton, pro se